



Department of Budget and Management
GOVERNMENT PROCUREMENT POLICY BOARD
TECHNICAL SUPPORT OFFICE

NPM No. 14-2012

18 January 2012

MS. MITA ANGELA M. DIMALANTA
Chairperson, Bids and Awards Committee
JOHN HAY MANAGEMENT CORPORATION (JHMC)
John Hay Special Economic Zone
P.O. Box 1088, Baguio City


Re: Third Re-bidding

Dear Ms. Dimalanta:

We refer to your letter dated 16 December 2011 requesting for approval and/or seeking clarification on the proposed third re-bidding of JHMC's infrastructure project "Renovation and Extension of Cottage 624".

We understand from your letter that there was a first failure of bidding¹ for the project. For the second public bidding², a winning bidder was declared but the recommendation to award the bid was disapproved by JHMC's Board of Directors (BOD) and the bidding was declared a failure. The BOD instructed the BAC to proceed to a third public bidding. However, JHMC was apparently informed by a GPPB-TSO Authorized Trainer from the Commission on Audit Technical Services Office that JHMC should resort to negotiated procurement.

We wish to stress that the existing government policy is that the procurement of infrastructure projects, goods, and consulting services shall be competitive, transparent, and undergo public bidding, except as otherwise provided by Republic Act (RA) 9184 and its revised Implementing Rules and Regulations (IRR).³ Alternative Methods of Procurement may be resorted to only in highly exceptional cases provided in Article XVI of RA 9184.

Among the highly exceptional cases recognized in the IRR is when there has been **Two Failed Biddings** or where there is a failure of public bidding for the second time as provided in Section 53 of RA 9184 and its IRR. 

¹ See Annex "A", BAC Resolution No. 2011-001.

² See Annex "B", BAC Resolution No. 2011-002.

³ Section 2 of RA 9184 and its IRR.

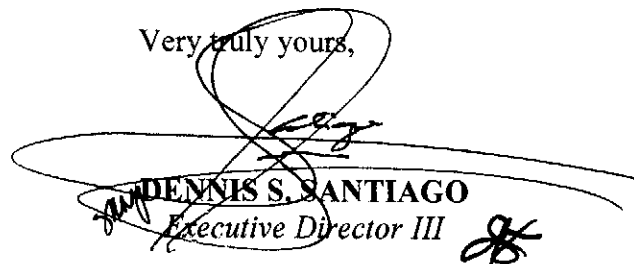
Although Section 53.1 of the IRR allows procuring entities to resort to negotiated procurement after two failed biddings, this is **not** mandatory. As provided in Section 48.1 of RA 9184 and its IRR, in order to promote economy and efficiency, the procuring entity **may** resort to any of the alternative methods of procurement provided in the IRR subject to the prior approval of the Head of the Procuring Entity (HOPE). (*Emphasis ours*)

The use of the word “may” indicate that resort to alternative methods is permissive. The word “may” is an auxiliary verb indicating liberty, opportunity, permission, and possibility. Its use in a provision shows that the act is discretionary, not mandatory on the part of the person to do it.⁴

Based on the foregoing, we are of the view that JHMC is not compelled to resort to negotiated procurement under Section 53.1 in case there has been two failed biddings. Negotiated Procurement (Two Failed Biddings) is an option, the exercise of which is merely permissive and discretionary upon the HOPE. Thus, the Government Procurement Policy Board’s approval on JHMC’s intended third re-bidding of its infrastructure project is unnecessary and not required under RA 9184 and its IRR.

We hope that our advice sufficiently addresses your concerns. Note that this opinion is being rendered on the basis of the facts and particular circumstances as presented. Should you have additional questions, please do not hesitate to contact us.

Very truly yours,



DENNIS S. SANTIAGO
Executive Director III

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⁴ See *Municipality of Binan, Laguna v. CA*, 219 SCRA 69 (1993).